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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,165	08/26/2003	Michael D. Gerdes	HE 8566C1	3533
1688	7590	08/12/2004	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			BELLAMY, TAMIKO D	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/648,165	Applicant(s) GERDES ET AL.	
	Examiner Tamiko D. Bellamy	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-40 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-23, 25-29, 31 and 33 is/are rejected.
- 7) ☒ Claim(s) 10, 24, 30 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/26/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/26/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-4, 7, and 16 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-4 of prior U.S. Patent No. (6,481,282). This is a double patenting rejection.

Re to claims 1 and 16, the patent '282, discloses in claim 1, mounting the wheel on a spindle, obtaining a first measurement (e.g., measuring a first run-out), altering the mounting, calculating a difference between a first measurement (e.g., first run-out) and a second measurement (e.g., second run-out). The ref '282 further discloses comparing the calculated difference with a threshold amount.

Re to claim 2, the patent '282, discloses in claim 2, loosening the mounting of the rotating body.

Re to claim 3, the patent '282, discloses in claim 3, loosening a wing nut.

Re to claim 4, the patent '282, discloses in claim 4, rotating a rotating body (e.g. wheel).

Re to claim 7, the patent '282, discloses in claim 5, a wheel rim (e.g., bare wheel).

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

4. Claims 1-9, 11-23, 25-29, 31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Douglas et al. (6,481,282).

The applied reference has two common inventors with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Re to claims 1 and 16, Douglas et al. discloses in claim 1, mounting the wheel on a spindle, obtaining a first measurement (e.g., measuring a first run-out), altering the mounting, calculating a difference between a first measurement (e.g., first run-out) and a second measurement (e.g., second run-out). Douglas et al. further discloses comparing the calculated difference with a threshold amount.

Re to claim 2, Douglas et al. discloses loosening the mounting of the rotating body.

Re to claim 3, Douglas et al. discloses loosening a wing nut.

Re to claim 4, Douglas et al. discloses rotating a rotating body (e.g. wheel).

Re to claims 5 and 17, Douglas et al. discloses a centering check, defined a threshold amount, and comparing a calculating the difference to threshold amount. Douglas specifically states (see col. 8, lines 5-10) that if the new measurement differs

from the previous measurement by more than predetermined threshold, the CPU causes a screen display a warning. Furthermore, Douglas et al. discloses that if miscentering is detected, the procedure is restarted. This teaching clearly infers and/or suggests that the calculated difference has not exceeded the predetermined threshold by the CPU not indicating a warning. Douglas also discloses the method is directed by the CPU (23) under program control (col. 9, lines 31-32).

Re to claims 6 and 7, Douglas et al. discloses a wheel rim (e.g., bare wheel) and a tire.

Re to claims 8 and 18, Douglas et al discloses that if the new measurement differs from the previous measurement by more than predetermined threshold, the CPU causes a screen display a warning that (see col. 8, lines 5-10).

Re to claim 9, Douglas et al. discloses that sensors (88 and 97) measure axial and radial wheel rim runout that includes both angle and magnitude (co. 7, lines 17-23).

Re to claim 11, Douglas et al. discloses that circuitry determined the required magnitudes and positions of correction weights to correct the imbalance (col. 5, lines 24-31).

Re to claim 12, Douglas et al. discloses that sensors (88 and 97) measure axial and radial wheel rim runout that includes both angle and magnitude (co. 7, lines 17-23).

Re to claim 13, Douglas et al. discloses transducer (col. 5, line 28).

Re to claims 14 and 15, Douglas et al. discloses a wheel balancer.

Re to claims 19 and 20, Douglas et al. discloses measuring lateral (e.g., axial) and radial runout inside and outside wheel rims (col. 7, lines 17-19).

Re to claim 21, Douglas et al. discloses establishing/defining an imbalance threshold (e.g., threshold amount), calculating the imbalance, and displaying the imbalance.

Re to claim 22, Douglas et al. discloses a CPU (23) that is able to calculate a remounted orientation of the tire on the wheel rim and sends the orientation to a display (25)(col. 7, lines 26-31).

Re to claim 23, as depicted in fig. 4A, Douglas et al. discloses a non-numeric display.

Re to claims 25-27, Douglas et al. discloses determining positions of correction weights (col. 5, lines 29-30), and detected unbalance with sensors (19, 21).

Re to claims 28, 29, 31, and 33 Douglas et al discloses identifying one dimension of the rotating body (e.g., tire and wheel rim roundness measurements (col. 7, lines 25-27)), determining the magnitude and position of the correction weights, and determining a threshold amount. Douglas et al. also discloses measuring axial and radial runout.

#### ***Allowable Subject Matter***

5. Claims 34-40 are allowed.
6. Claims 10, 24, 30 and 32 is objected to as being dependent upon a rejected base claim, but would be allowable if in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamiko D. Bellamy whose telephone number is (571) 272-2190. The examiner can normally be reached on Mondays, Tuesdays & Fridays 6:30 AM to 3:30PM; and on Wednesdays and Thursdays the examiner 6:30 AM to 11:30 AM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tamiko Bellamy

T.B.

July 28, 2004

  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800